

**FILED**

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Board of Vocational Nursing  
and Psychiatric Technicians

KAMALA D. HARRIS  
Attorney General of California  
ALFREDO TERRAZAS  
Senior Assistant Attorney General  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
State Bar No. 101336  
110 West "A" Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-3037  
Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2009-3851

**SAMUEL CRUZ, JR.  
1546 Drexel Lane  
Lemon Grove, CA 91945**

**A C C U S A T I O N**

**Vocational Nurse License No. VN 152459**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about April 30, 1991, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 152459 to Samuel Cruz, Jr. (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the  
2 following:

3 . . . .

4 (f) Conviction of a crime substantially related to the qualifications, functions,  
5 and duties of a licensed vocational nurse, in which event the record of the conviction  
6 shall be conclusive evidence of the conviction.

7 . . . .

8 9. Section 2878.5 of the Code states:

9 In addition to other acts constituting unprofessional conduct within the meaning  
10 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
11 a person licensed under this chapter to do any of the following:

12 . . . .

13 (b) Use any controlled substance as defined in Division 10 of the Health and  
14 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
15 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
16 any other person, or the public, or to the extent that the use impairs his or her ability  
17 to conduct with safety to the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving possession of any narcotic or  
19 dangerous drug, or the prescription, consumption, or self-administration of any of the  
20 substances described in subdivisions (a) and (b) of this section, in which event the  
21 record of the conviction is conclusive evidence thereof.

22 . . . .

## 23 REGULATORY PROVISIONS

24 10. California Code of Regulations, title 16, section 2521, states:

25 For the purposes of denial, suspension, or revocation of a license pursuant to  
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered to be substantially related to the qualifications,  
28 functions or duties of a licensed vocational nurse if to a substantial degree it  
evidences present or potential unfitness of a licensed vocational nurse to perform the  
functions authorized by his license in a manner consistent with the public health,  
safety, or welfare. Such crimes or acts shall include but not be limited to those  
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of  
Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or  
abetting the violation of, or conspiring to violate any provision or term of Chapter  
6.5, Division 2 of the Business and Professions Code.

1 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
2 whether a licensed physician or not, in the performance of or arranging for a violation  
3 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
4 Professions Code.

5 (e) Conviction of a crime involving fiscal dishonesty.

6 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
7 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
8 Business and Professions Code.

9 11. California Code of Regulations, Title 16, section 2522 states:

10 When considering a) the denial of a license under Section 480 of the Business  
11 and Professions Code, b) the suspension or revocation of a license on the ground that  
12 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
13 under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
14 the rehabilitation of an individual and his or her present eligibility for a license, will  
15 consider the following criteria:

16 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

17 (2) Actual or potential harm to the public.

18 (3) Actual or potential harm to any patient.

19 (4) Overall disciplinary record.

20 (5) Overall criminal actions taken by any federal, state or local agency or court.

21 (6) Prior warnings on record or prior remediation.

22 (7) Number and/or variety of current violations.

23 (8) Mitigation evidence.

24 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
25 court-ordered probation.

26 (10) Time passed since the act(s) or offense(s) occurred.

27 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
28 Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory  
agencies.

(13) Other rehabilitation evidence.

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1 **COST RECOVERY**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(July 27, 2010 Criminal Conviction for DUI on March 18, 2010)**

8 13. Respondent has subjected his license to disciplinary action under sections 490 and  
9 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
10 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
11 circumstances are as follows:

12 a. On or about July 27, 2010, in a criminal proceeding entitled *People of the*  
13 *State of California v. Samuel Cruz*, in San Diego County Superior Court, case number C300515,  
14 Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,  
15 subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher, a  
16 misdemeanor. A second count of violating Vehicle Code section 23152, subdivision (a), driving  
17 under the influence of alcohol, was dismissed pursuant to a plea agreement.

18 b. As a result of the conviction, on or about July 26, 2010, Respondent was  
19 granted five years summary probation, and sentenced to 180 days in jail, with credit for one day,  
20 stayed pending successful completion of probation. Respondent was further ordered to pay  
21 \$1,932 in fees, fines, and restitution, attend and complete a three-month First Conviction Program  
22 and a MADD victim impact panel, and comply with standard conditions of DUI probation.  
23 Respondent's driver's license was suspended.

24 c. The facts that led to the conviction are that on or about the early morning of  
25 March 18, 2010, a patrol officer with the El Cajon Police Department observed Respondent  
26 driving in a suspicious manner and conducted a traffic stop. When contacting Respondent, the  
27 officer noted the odor of an alcoholic beverage on Respondent's breath, his eyes were bloodshot  
28 and watery, and his speech was slurred. When Respondent exited his vehicle, he had an unsteady

1 gait. Respondent agreed to perform a series of field sobriety tests, which he did not perform  
2 correctly as explained and demonstrated. Based on Respondent's objective symptoms of  
3 intoxication, his performance on the field sobriety tests, and his admission to consuming alcohol,  
4 Respondent was arrested for driving under the influence. Once at the police department,  
5 Respondent provided two breath samples for the Breathalyzer which measured .11 percent blood  
6 alcohol concentration.

## 7 **SECOND CAUSE FOR DISCIPLINE**

### 8 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

9 14. Respondent has subjected his license to disciplinary action under section 2878.5,  
10 subdivision (b) of the Code in that on or about March 18, 2010, Respondent was under the  
11 influence of alcohol in a manner dangerous or injurious to himself and others, in that he operated  
12 a motor vehicle on a public roadway while intoxicated as described in paragraph 13, above.

## 13 **THIRD CAUSE FOR DISCIPLINE**

### 14 **(Unprofessional Conduct - Criminal Conviction Involving the Consumption of Alcohol)**

15 15. Respondent has subjected his license to disciplinary action under section 2878.5,  
16 subdivision (c) of the Code in that on or about July 27, 2010, Respondent was convicted of  
17 driving under the influence of alcohol, as detailed in paragraph 13, above.

## 18 **DISCIPLINARY CONSIDERATION**

19 16. To determine the degree of discipline, if any, to be imposed on Respondent,  
20 Complainant alleges:

21 a. On or about March 16, 2001, in a prior criminal proceeding entitled *People of*  
22 *the State of California v. Samuel Cruz*, in San Diego County Superior Court, case number  
23 M821737DV, Respondent was convicted on his plea of guilty of violating Penal Code section  
24 242-243, subdivision (e)(1), battery, a misdemeanor. Additional counts of assault (Pen. Code, §  
25 240-241, subd. (a)), spousal abuse (Pen. Code, § 273.5, subd. (a)), and intimidating a witness  
26 (Pen. Code, § 136.1, subd. (b)(1)), were dismissed pursuant to a plea agreement.

27 b. As a result of the conviction, Respondent was sentenced to summary probation  
28 for three years, pay fines and fees in the amount of \$300, and ordered to complete 15 days of

1 public work service, with credit for three days. Respondent was further ordered to attend and  
2 complete a one-year certified Domestic Violence Program.

3 c. The circumstances that led to the conviction were that on or about March 14,  
4 2001, officers from the San Diego Police Department responded to the residence Respondent  
5 shared with his girlfriend (victim) in response to a 911 call. Upon arrival, the officers met with  
6 Respondent who told them the victim had left already. While at the residence, she called and  
7 spoke to the officers. The victim stated that during an argument, Respondent hit and pushed her.  
8 Respondent disconnected the telephone and prevented her from calling the police. The victim  
9 fled the apartment with their child and called the police from her sister's house. The officer  
10 photographed a bruise on the victim. Respondent was arrested for domestic violence. Marijuana  
11 was found in Respondent's pocket.

12 d. In a letter to Respondent dated June 27, 2003, an Enforcement Analyst from the  
13 Board advised Respondent that the Board was not going to pursue disciplinary action against him  
14 at that time. However, Respondent was warned that future substantiated reports of similar  
15 behavior, or other violations of the law or violations of regulations governing the practice of a  
16 vocational nurse could result in disciplinary action against Respondent's license.

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1 **PRAYER**

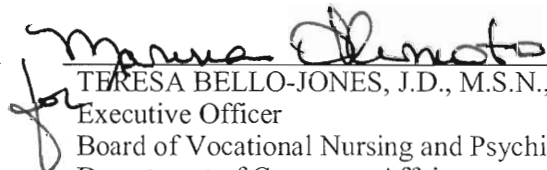
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 152459, issued to  
6 Samuel Cruz, Jr.;

7 2. Ordering Samuel Cruz, Jr. to pay the Board of Vocational Nursing and Psychiatric  
8 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
9 Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: January 13, 2011

  
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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